

Fwd: Re: beneficial use of produced waters in Wyo.

Peggy Livingston to: livingston.peggy

02/14/2011 08:08 PM

From: Peggy Livingston <peggyliv@indra.com>

To:

----- Original Message -----

Subject:Re: beneficial use of produced waters in Wyo.

Date:Mon, 7 Feb 2011 08:44:33 -0700

From:Lai.Elaine@epamail.epa.gov

To:Weston Wilson <anwwilson@comcast.net>

CC:Peggy Livingston <peggyliv@indra.com>

Thanks for sending along. I think that will be a challenging argument, as the companies have all submitted letters from tribal ranchers/farmers that indicate that they rely entirely upon this discharge for watering their cows given lack of alternative water resources in the vicinity...

From: Weston Wilson <anwwilson@comcast.net>

To: Peggy Livingston <peggyliv@indra.com>, Elaine
Lai/R8/USEPA/US@EPA

Date: 02/05/2011 03:45 PM

Subject: beneficial use of produced waters in Wyo.

Peggy and Elaine

re: the Sheldon SOB and need to actually use prod. water under part 435.

I thought you should see this related debated about using produced water -- in this case from the water produced to develop CO2 sequestration wells.

Wes

HB 163: Water Produced from Carbon Sequestration

This bill was written by Rep. Jeb Steward to prevent the mere production of water during carbon sequestration activities to be deemed a beneficial use of that water. The bill requires that produced water be put to actual beneficial use so the industry will "avoid the sins of the past that occurred with CBM produced water." The bill was heard on

Thursday in Senate Ag. The coal industry testified against the bill since they believe they will be unable to find a beneficial use for all of the produced water that comes with sequestration. The Rocky Mountain Farmer's Union and the Farm Bureau spoke against the bill by expressing worries that it would impact the beneficial use of produced water from the oil field. PAW also spoke against the bill on the same grounds (even though in reality the bill will have absolutely no effect on enhanced oil recovery and PAW had previously agreed to stay neutral on the bill). Testimony for the bill came from Powder River, the Woolgrowers and the UW School of Energy Resources. The Bill passed 5 to 4 with Reps. Blake, Campbell, Hunt, Moniz and Semlek voting YES. Reps. Davison, Loucks, Eklund and Zwonitzer voted NO. The bill must pass 1st reading in the house on Monday to survive.

this from the full report from Jill Morrison of the PRBRC which follows:

Powder River Legislative Update
Week 4: Jan 31-Feb 4

Greetings from windy Cheyenne, and that goes for the climate both inside and outside the Capitol. This was my first full week here lobbying on your behalf and I felt like I had big shoes to fill taking over for Shannon. (I wonder if she knew the wind chill was going to be 45 below zero in Cheyenne?)

This is the week bills begin to die if they have not been passed out of committee in the house of origin by Friday, February 4th. Those same bills will have to have some political muscle behind them in order to be heard on General File (first reading of the bill) in the house of origin by adjournment on Monday. I dubbed the week the "Comeback bill" as several bills that died last week were resurrected to live another day in another committee or in another form.

We had successes with moving forward the legislation that prohibits the use eminent domain for wind collector lines - this was one of the resurrected bills. The traditional food bill moved forward in the Senate and requiring beneficial use for water produced from geologic sequestration passed out of the House committee. We have more work ahead of us to keep these good bills moving forward and to amend or kill some of the bad bills. See the alert and discussion below on SF 117 - the BUG bill.

Thanks to all you - the citizens - who make the difference by contacting legislators. Kevin Lind and Deb Thomas will be our eyes and ears at the capitol next week. Please feel free to call us with any questions.

All the best, Jill

SF 116: Oil and Gas Enhanced Recovery - Microbial Conversion of Coal to Gas

This bill - we've dubbed the "Bug" bill or "Microbes on Meth" - has already sailed through the Senate and is coming before the House Minerals committee on Monday. It has some high powered lobbyists behind it and we have an uphill effort to kill this bill or amend it. The bill sets up a regulatory scheme to permit industry to put microbes or chemicals (they call them nutrients) down depleted CBM wells and create super bugs to eat the coal and make gas. This is a completely new,

unproven and maybe revolutionary technology. We are concerned about industry running too far too fast with this technology until more research and development confirms the RIGHT way to do it. There are potentially big risks to our groundwater resources. Right now the Powder River Basin will be the guinea pig location for this new technology where the companies have collected over 1300 CBM wells. Please contact House Committee members and ask them to vote NO on SF 116. Ask them to go slower and investigate this technology and work to make sure it is DONE RIGHT. We are working to amend the legislation to provide more protections for landowners and our water. The legislators we hope to convince to vote NO or amend are: jbyrd@wyoming.com; mgreear@rtconnect.net; nkasperik@wyoming.com; gmoniz@bresnan.net; jim@roscoeco.com; dzwonitzer@wyoming.com; davezwonitzer@wyoming.com; The Chairman Rep. Tom Lockhart is a supporter of industry and Representative Tim Stubson is a sponsor of the legislation. If you would like to contact them their email: Tlockh1617@aol.com; tim@stampedeforstubson.com

HB 230 - Prohibits Eminent Domain for Wind Energy Collector Systems
This was our "comeback" bill for the session. It was resurrected by the House Ag Committee after some shenanigans in House Minerals killed the bill despite promises to extend the moratorium on the use of eminent domain. Rep. Brown, Rep. Steward, and Rep. Semlek (Chair of the House Ag Committee from Moorcroft) deserve big thanks for bringing the bill back. The bill prohibits the use of eminent domain for private merchant wind developers but not public utilities. It was amended in committee to extend the moratorium until 2013 and allow landowners and wind developers time to work on final legislation.

Testimony for the bill came from a landowner group in Converse County; an attorney who negotiates wind development and easements for wind lines, Powder River, the Wyoming Stockgrowers and Rocky Mountain Power. Those testifying against the bill included Dan Sullivan representing the Wyoming Power Producers, who claimed that this prohibition of eminent domain will bleed over into other industries, and Scott Zimmerman, who sometimes represents the Rocky Mountain Farmers Union and sometimes represents the Inter-west Energy Alliance (a coalition of wind companies).

Rep. Dan Zwonitzer expressed some concerns about bring this bill back since it was already killed in the Minerals committee. In the end, the arguments against the bill did not sway any member of the committee and it passed unanimously. The bill has made it past second reading on the full floor of the house. The floor debate against the bill was lead by Tom Lockhart, Minerals Committee chairman and Rep. Tim Stubson, Minerals Committee vice-chairman. The debate for the bill was lead by Rep. Brown, Rep. Steward and Rep. Lubnau.

During second reading today, Representative Stubson sponsored an amendment to further exempt merchant power producers that sell power to Wyoming utilities from the eminent domain ban. Reps Steward & Lubnau spoke against the amendment, arguing that the amendment would create "a huge loophole that totally guts the moratorium" and it failed by a large margin.

The bill will be up for a critical 3rd and final reading in the house on Monday. Please ask your representatives to vote YES on HB 230.

HB 8: Wyoming Traditional Food Act

We are supporting this bill which will exempt food sold at nonprofit

community events and church fundraisers from health department inspection and regulation requirements. The bill has passed the House and was heard in the Senate Ag committee this week. Testifying against the bill were three regulators from the state health department and the Cheyenne health department. Chairman Senator Bebout informed them they had home rule and did not have to implement this legislation as a home rule county. We testified for the bill and thanked Senator Bebout for introducing the legislation. It passed the committee unanimously. It will be heard on the Senate floor next week.

HB 61: Omnibus Water Bill-Planning

This bill includes \$100,000 for the Water Development Commission study of potential sources for replacement water for citizens in Pavillion who cannot use their water wells because of contamination. We support the bill. It passed smoothly through the House this week and also passed the Senate Ag committee. It will be heard on the Senate floor next week.

HB 112: Mining Permits

This bill would have made the DEQ Land Quality Division abide by statutory time limits to issue or deny permits. We were more or less neutral on the bill, although we were watching for any negative amendments. The bill passed the House by a vote of 57-1, but in an amazing turnabout when the bill was heard in the Senate Minerals Committee today, the mineral industry asked that the bill to be laid back because they had decided they did not need this bill anymore. Actually, industry realized that the time limits could work against them and more permits could be denied. Chairman Bebout agreed to lay the bill back and pushed Director Corra to get permits through in a "better, quicker and faster time frame." Corra promised his division would work hard to get permits out the door faster but he was concerned about the failure to fund the new staff needed to review permits.

HB 120-121: Public Records Act & Open Meetings Act Improvements

These bills would make improvements to the state's Public Records Act and Open Meetings Act. We support these bills. HB 120 was modestly amended on the House floor and passed with 58 to 2. No votes were cast by Reps. Byrd and Peasley. HB 121 was also slightly amended and passed the House 56 to 4 with NO votes cast by Reps. Brechtel, Byrd, Davison, Greear, McKim and Stubson.

HB 129: Nuclear energy production study

This is essentially the bill that Governor Freudenthal vetoed last year. The bill funds a task force to look at ways to promote nuclear energy in the state. We are opposing the bill on fiscal grounds because if the nuclear industry wants a study, they should fund it. The bill passed the House with strong support 56 to 3 and 1 excused. Voting no was Reps. Blake, Conolly and Gingery.

HB 163: Water Produced from Carbon Sequestration

This bill was written by Rep. Jeb Steward to prevent the mere production of water during carbon sequestration activities to be deemed a beneficial use of that water. The bill requires that produced water be put to actual beneficial use so the industry will "avoid the sins of the past that occurred with CBM produced water." The bill was heard on Thursday in Senate Ag. The coal industry testified against the bill since they believe they will be unable to find a beneficial use for all of the produced water that comes with sequestration. The Rocky Mountain Farmer's Union and the Farm Bureau spoke against the bill by expressing worries that it would impact the beneficial use of produced water from the oil field. PAW also spoke against the bill on the same grounds

(even though in reality the bill will have absolutely no effect on enhanced oil recovery and PAW had previously agreed to stay neutral on the bill). Testimony for the bill came from Powder River, the Woolgrowers and the UW School of Energy Resources. The Bill passed 5 to 4 with Reps. Blake, Campbell, Hunt, Moniz and Semlek voting YES. Reps. Davison, Loucks, Eklund and Zwonitzer voted NO. The bill must pass 1st reading in the house on Monday to survive.

HB 176: Nuclear Energy as "Carbon Free"

Sponsored by a main proponent of uranium and nuclear power, Rep. Miller, this bill would exempt equipment used for nuclear power plants from sales and use taxes. The bill adds in nuclear power as a "carbon free" power source to a bill that exempts renewable energy facilities from sales and use tax. That exemption is set to expire, so in theory, this bill would have absolutely no impact, but Rep. Miller says he wants to have the discussion about nuclear power and link nuclear to renewables. The bill passed with 46 Yes votes and 13 No votes and 1 excused. Voting No Reps: Barbuto, Blake, Botten, Byrd, Connolly, Esquibel, K., Freeman, Greear, Madden, Roscoe, Steward, Stubson and Zwonitzer, Dan.

HB 179: Energy Improvement Projects

This bill is sponsored by the Teton County delegation and other legislators. It declares that projects for energy efficiency or small-scale renewable energy are a "public purpose" that local governments can spend money on and establishes a legislative framework for Property Assessed Clean Energy programs in the state. We support the bill. The bill was heard in the House corporations committee the previous Friday and again on Monday morning they reconvened for a vote. This time the bill received the support of Rocky Mountain Power and Black Hills Power. This removed any suspicions about the bill and it passed committee with only one NO vote from Rep. Kroeker. The bill went on to pass the House 40 to 17. Voting against the bill: Botten, Brechtel, Davison, Edmonds, Greear, Jaggi, Kroeker, Loucks, Lubnau, Madden, McKim, Peasley, Quarberg, Semlek, Steward, Teeters and Wallis.

HB 191: Wind Energy Tax

This bill would shift the relatively simple tax framework currently in place (\$1/megawatt hour) to a complex system where the excise per megawatt hour tax rate would increase but companies would not have to pay sales & use taxes, and an impact assistance fund would be established to funnel money to local governments to deal with impacts. Because the bill was filed so late in the game, the Legislative Service Office & the Department of Revenue did not have time to prepare a fiscal note. The bill sponsor, Rep. Stubson, claims that it would provide a greater amount of tax revenue over the long run, but no one has the numbers to back that up. Local governments have opposed the bill because of concerns about removing sales tax revenue and decreasing the megawatt tax in the beginning years because they need up front revenue to address community growth during construction periods of the wind energy facilities. Stubson countered that requiring companies to pay a lot of taxes up front is a barrier to new development. Rep. Steward, who opposes the bill, says it boils down to "does this industry want to be a good neighbor or not." After a lot of debate and vocal opposition, the bill narrowly passed first reading on Friday. Stubson has promised some additional amendments to help fund the impact assistance account, but he may have to do it through a loan from the legislative reserve account, a move that will likely be unpopular with legislators. The bill has to be debated two more times before it can move to the Senate.

HB 217: Energy Production States Agreement

Rep. Lubnau and other legislators sponsored this legislation to fund an effort to work with other states that are net energy exporters to create an agreement to fight EPA regulations, take on California, or otherwise promote extractive industries. Rep. Lockhart spoke in favor of the bill saying that energy production states need to "show the federal government that we are working together to provide energy for this nation." Lockhart & Lubnau said that they have already approached Montana, Alaska, Texas, and Utah about entering into an agreement and those states are working on similar legislation. They said they have also approached Colorado and New Mexico, but have not gotten commitments from them.

HB 260: Industrial Siting - Removing requirement to provide assurance of financial ability to construct the facility

This bill is also a late-filed gift from Rep. Stubson. It would repeal a requirement under the Industrial Siting Act to provide financial assurances regarding construction, maintenance and operation of facilities in permit applications. The back story (as far as we can tell) is that the Industrial Siting Division of the Dept. of Environmental Quality, recently revised their rules to prevent facilities from keeping permits for a long time without actual construction (for instance, the Two Elk power plant). It's unclear what "problem" the bill is trying to solve, who is lobbying for it, or what implications the bill would have on DEQ's rulemaking efforts - but for now we are opposing the bill because of all of these questions and concerns. The bill passed through the House Minerals Committee and is at the top of the list for General File (1st Reading) when the House re-convenes Monday morning.

Senate File 9: Economic Analysis

This bill was vetoed by Governor Freudenthal last year. It funds a staff member and a database system to allow the state to model "economic impacts" of proposed environmental regulation. We are against the bill on fiscal grounds. The bill passed smoothly through the Senate, but the Appropriations Committee cut the funding down to \$250,000 (from \$312,000). The bill is waiting to be heard in the House Ag committee. It is unclear with the limited funding whether the Economic Analysis Division can actually implement the program.

Senate File 22: Wind Energy Property Rights

This bill affirms that the right to lease land for wind energy belongs with the surface estate and that "wind rights" cannot be severed from the surface estate. We support the bill. It passed the Senate by a 30-0 vote. The bill is now in the House and will likely be heard by the Judiciary committee in the coming week.

SF 58: Landowner Rights in Wind Energy Development

This bill, sponsored by the President of the Senate, Sen. Anderson (R-Converse County) improves notice provisions for landowners under the Industrial Siting Act for commercial wind energy facilities. We support the bill. The bill passed the Senate by a 30-0 vote and is now on to the House and will be heard in the coming week before the House Ag committee.

SF 73: Municipal Solid Waste Landfills

The bill requires DEQ to create a priority list of landfills for cleanup. Most unlined municipal landfills in the state are leaking contaminants into groundwater. Clean-up costs could cost upwards of \$225 million. We support the bill as a way to get the cleanup efforts moving. The bill passed the Senate on Monday with an amendment defining

groundwater in the statute - an action that raised concerns with the Wyoming Solid Waste & Recycling Association, an ally of ours on landfill issues. The bill has been referred to the House Minerals committee and will be heard in the next week.

SF 121 - Landfills, Performance Based Design

For those of you that have been on our legislative action list for a couple of years, you may remember SF 135 from 2009, which proposed a risk assessment process for municipal landfill permitting. The purpose of the bill was to allow local governments to build landfills without liners. It also shifted the burden of proof from the permit applicant to the DEQ - something that would have cost the state a lot of money to implement. This bill was not only a bad idea (see discussion of SF 73 above), but it also violated federal waste law and thus would have threatened the state's ability to permit landfills. After a lot of hard work from us and our allies, the House voted down the bill.

When the bill was revived our staff and lobbyist, Shannon, met with this ad hoc group for several hours and eventually the group agreed that the best idea would be just to implement the federal regulatory framework into the statute. The substitute bill was approved by the Senate Minerals Committee on Monday and re-referred to the Appropriations committee. The bill was approved by the Senate Appropriations Committee with no funding. An appropriation may be proposed and debated on the floor or in the Budget bill.

For a complete list of bills and links to the bill text, visit <http://legisweb.state.wy.us/2011/billindex/BillCrossRef.aspx?type=ALL>